plaintiffs there was an arrangement between the plaintiffs and the second defendant, who was the managing partner of Universal Service Agency, sole agents for Triumph motor-cycles, that if any customer wished to buy a motor-cycle from his agency on hire-purchase agreement the agency would sell the motor-cycle to the plaintiffs and the plaintiffs would let it out on hire-purchase terms to the customer. No such evidence was given by James Lim in *Abdul Rahman's* case. I have, therefore, material in this case on which I can come to a different conclusion from that which I reached in that suit. I see no reason for rejecting the evidence of Mr. James Lim on this point.

Although the second defendant claims that he was not acting as agent for the plaintiffs in this transaction the fact remains that he was in a position of trust *vis-a-vis* the plaintiffs of which firm he was a founder-director. Mr. James Lim was not challenged on his evidence about such a prior arrangement at the commencement of the plaintiffs' business. Walker in the proposal form also declared that he understood that the plaintiffs would be purchasing the motor-cycle from the second defendant. I do not think that he would have signed such a declaration if he had regarded himself as the owner. In all the circumstances, therefore, despite the second defendant's assertion that he did not sell the motor-cycle to the plaintiffs and that he had sold it to Walker who had made part-payment and become part-owner of the motor-cycle, I am satisfied, on a balance of probabilities, that the arrangement to which Mr. James Lim referred did, in fact, exist and that the agreement was that the plaintiffs in all such transactions were to become owners. As the second defendant himself admitted it was not the intention at the time that the property in the motor-cycle should pass to Walker. It follows that this was not merely a loan of money to Walker by the plaintiffs masquerading as a genuine hire-purchase agreement but, in fact, a transaction such as those recognised as a mercantile service mentioned by Simonds J. in *Transport & General Credit Corporation Ltd.* v. *Morgan* [2] where he says —

> "It must be remembered that hire-purchase agreements now take a very large part in the commercial and social life of the community, and the financing of them is an enormous business in the City of London and elsewhere. It appears to me that the financiers and the dealers co-operate in the common venture of making the whole business of hire-purchase agreement, which is now, for good or for evil, a necessary part of our social life, feasible, and to regard one party to that common venture, which is now a recognized mercantile service, as carrying on the businesss of a moneylender is an abuse of language".

Walker who appears on the writ as the first defendant was not served with the writ as he had been repatriated to England and accordingly was not a party to the proceedings. It remains for me to consider whether the claim should succeed against the second defendant as Walker's guarantor.

Counsel for the second defendant stressed there had been a variation of the guarantee in that the plaintiffs had allowed the second defendant to collect instalments contrary to the terms of the hire-purchase agreement and that thereby the guarantee was avoided. It should be noted, however, that the guarantee signed by the second defendant contains a provision that the plaintiffs' rights under the guarantee shall not be prejudiced by any variation in any of the terms of the said agreement.

In the circumstances judgment will be entered for the plaintiffs with costs.

[After hearing further argument costs both here and in the court below were fixed at $500 in favour of the respondents.]

*Judgment for the plaintiffs.*

Solicitors: *J. Tan Chor-Yong & Co.; Pillai & Co.*

---

## UNITED INVESTMENT AND FINANCE LTD. v. TEE CHIN YONG & ORS.

[O.C.J. (Chua J.) July 27, 1966]

[Singapore — Consolidated Suits Nos. 804, 945 and 946 of 1964]

*Companies — Meeting — Whether one director can constitute quorum for meeting — Forfeiture of shares.*

*Costs — Proceedings instituted by managing director without authority of directors — Dismissal of action.*

The plaintiffs claimed payment of the balances due from the defendants to the company for shares in the company upon forfeiture of their shares. The resolution to forfeit the shares and to institute proceedings was taken at a general meeting of the company attended only by two members of whom only one had paid up his shares. The meeting was an adjourned meeting and under article 35 of the company at this adjourned meeting "the members present should be a quorum".

**Held:** (1) the meeting of the company could not be constituted by one member and therefore there was no quorum at the meeting held by the company in this case and the resolution purported to be passed was invalid;

(2) as the actions were brought without authority, they must be struck out.

*Cases referred to:—*

(1) *East* v. *Bennett Brothers Ltd.* [1911] 1 Ch. 163.

(2) *Sharp* v. *Dawes* (1876), 2 Q.B.D. 26.

(3) *Re Sanitary Carbon Co.* [1877] W.N. 223.

(4) *Harris* v. *The North Devon Railway Co.* 52 E.R. 651.

(5) *Daimler* v. *Continental Tyre and Rubber Co.* [1916] 2 A.C. 307.

(6) *John Shaw & Sons (Salford) Ltd.* v. *Peter Shaw and John Shaw* [1935] 2 K.B. 113.

CONSOLIDATED SUITS.

*S. H. Elias* (*J. Tan Chor-Yong* with him)

for the plaintiffs.

*John Pillai* for the defendant.

*Cur. Adv. Vult.*

**Chua J.:** The plaintiffs claim $41,000 from the defendant Tee Chin Yong, $80,000 from the defendant Peter Wong Tak On, and $18,000 from the defendant Tan Khia Fatt being the balances payable by the defendants under contracts by them to take 500, 1,000 and 200 shares respectively of $100 each in the plaintiff company and/or upon allotment of such shares to the defendants and/or upon the forfeiture of such shares on 9th November, 1963, by reason of the defendants having failed to pay such balances.

The defendants in their defences admitted that they agreed to take the shares allotted to them and agreed that the balances claimed were outstanding but denied that they refused to pay the balances or that their shares were duly forfeited. They also said that these proceedings were instituted without any proper authority. The defendants counterclaimed for a declaration, *inter alia*, that (a) they are still the proprietors of the shares allotted to them and (b) the said shares have not been forfeited.

The plaintiffs filed a reply and defence to counterclaim.

The facts shortly are these. The plaintiff company was incorporated on the 23rd November, 1961. The capital of the company is $5,000,000 divided into 50,000 shares of $100 each. The main object of the company is to carry on the business of hire purchase financiers. The subscribers and first directors were Geh Chong Keat, S. K. Lee, James Lim Hock Guan and the defendant Peter Wong Tak On. The defendants Tee Chin Yong, Peter Wong Tak On and Tan Khia Fatt applied for and were allotted, on the 16th January, 1962, 500, 1,000 and 200 shares respectively of $100 each in the plaintiff company on the terms that the amounts due for the shares were to be paid as follows:

Deposit of 10% on 31st January, 1962.

1st instalment 30% on 14th February, 1962.

2nd instalments 15% on 28th Feburary, 1962.

3rd instalment 15% on 14th March, 1962.

4th instalment 15% on 28th March, 1962.

5th instalment 15% on 11th April, 1962.

The shares of the defendants were entered on the company's register of shareholders. The defendant Tee Chin Yong has paid a total of $9,000 for his shares — $1,500 on 16th January, 1962, $500 on 31st January, 1962, and $6,000 on 6th March, 1962, — leaving a balance of $41,000 unpaid. The defendant Peter Wong Tak On has paid a total of $20,000 for his shares — $10,000 on 7th April, 1962, and $10,000 on 15th June, 1962, — leaving a balance of $80,000 unpaid. The defendant Tan Khia Fatt has paid only $2,000 for his shares on the 9th April, 1962, leaving a balance of $18,000 unpaid.

On the 16th January, 1962, at the first board of directors meeting three additional directors were appointed, namely Leong Kee Nyean, Wong Hieng Tock and Gan Hock Chwee. Leong Kee Nyean was appointed chairman, Gan Hock Chwee deputy chairman and James Lim Hock Guan managing director. The board on that day resolved that 7,000 shares be allotted to sixteen persons who had applied for shares. The applicants included the three defendants and all the directors.

By the 8th September, 1962, only $259,000 had been paid up by the shareholders against the issued capital of $710,000. It is interesting to note that not one member (including the directors) had fully paid up their shares by the 8th September, 1962, when they had contracted to do so by the 11th April, 1962.

By the 13th October, 1962, only one member had paid up in full.

It was discovered that the managing director had been dishonest and at the board meeting of 8th December, 1962, the board resolved that the accounts of the company be investigated into and also resolved to suspend business for the time being except the collection of hire purchase repayments. The managing director admitted that he had made use of $19,000 of the company. Needless to say the managing director was removed from his post and he later resigned from the company.

The first annual general meeting was called for the 9th December, 1962. Only six members attended. There being no quorum present, the quorum being not less than 10 members, the meeting was adjourned to the 29th December, 1962, pursuant to article 55.

On the 29th December, 1962, only eight members were present including the defendants Peter Wong Tak On and Tan Khia Fatt. At this meeting, by virtue of article 65, only two members present were entitled to be present or to vote as the other members had not paid their calls in full. These two members then constituted the meeting and certain business was conducted.

On the 2nd February, 1963, the statement of accounts for the year ending 31st December, 1962, was gone into by the directors. The profit and loss account showed a loss of $63,516 for the year. On that day the directors accepted the offer of Wong Hieng Tock "to look after the office without remuneration".

By the 19th February, 1963, Wong Hieng Tock had paid up fully for his 1,000 shares.

On the 25th February, 1963, three directors and two members offered their shares for sale.

The two members had paid up fully for their shares. Wong Hieng Tock purchased the fully paid up shares totalling 200.

By the 1st March, 1963, S. K. Lee's shares had been fully paid up.

On the 5th March, 1963, a board meeting was held. At this meeting the three directors withdrew their offers to sell their shares and the following resolutions were passed:

"(1) The board resolved to hold an extraordinary meeting of the members of the company on 6th April, 1963, at 3.00 p.m. at the company's registered office for the purpose of considering and if thought fit passing the following resolution as a special resolution:—

'That the quorum for general meeting and directors' meeting provided in article 54 and 89 respectively of the articles of association of the company be altered to two'.

(2) The board further resolved to instruct the secretary to write to those members who had not fully paid up their shares to pay to the company the amount of outstanding call on or before the 6th day of April, 1963 and to notify them that, in the event of their not making such payment of arrears of call within this time, the shares held by them were, under the articles of association, liable to be forfeited".

Wong Hieng Tock was appointed managing director of the company without salary.

On the 9th March, 1963, a notice of call in arrear was sent by the secretary to all those members who had not fully paid up their shares requesting them to pay to the company the amount of their call on or before the 6th April, 1963, and warning them that in the event of their not making such payment their shares were liable to be forfeited.

On the 9th March, 1963, a notice of extraordinary general meeting to be held on the 6th April, 1963, for the purpose of "considering and if thought fit passing the following resolution as a special resolution:

"That the quorum for general meeting and directors' meeting provided in articles 54 and 89 respectively of the articles of association of the company be altered to two".

was sent to the fourteen members of the company.

From the minutes it would appear that an extraordinary general meeting was held on the 13th April, 1963. Only two members were present — Gan Hock Chwee and Wong Hieng Tock. Gan Hock Chwee was elected to take the chair. The minutes read:

"There were only two members present at this meeting which was adjourned from Saturday, 6th April, 1963, due to lack of quorum.

This meeting was held in accordance with article 55 of the articles of association of the company.

.. .. .. .. .. .. .. .. .. .. .. ..

Resolution: The following resolution was passed as a special resolution:

That the quorum for general meeting and directors' meeting provided in articles 54 and 89 respectively of the articles of association of the company be altered to two".

On the 11th May, 1963, the secretary sent to the six directors a notice of board meeting to be held on 18th May, 1963, for the following purposes:—

"1. To consider whether or not to forfeit the shares of those members who have failed to pay the balance due and payable on their shares.

2. To consider the position of those directors who have not yet paid up their shares in full.

3. To transact any other business of the company".

A board meeting was held on the 18th May, 1963. Only two directors were present — Gan Hock Chwee and Wong Hieng Tock. Gan Hock Chwee took the chair. The following resolution, *inter alia*, was passed:

"That the managing director, Mr. Peter Wong Hieng Tock be and is hereby authorised to take the necessary action in enforcing the payment of instalments due and payable on shares allotted on 16th January, 1962".

On the 27th June, 1963, the secretary sent a final notice to all those members who had not fully paid up their shares asking them to pay their arrears to the company on or before the 31st July, 1963, and warning them that their shares would be forfeited without further notice in accordance with article 20.

On the 5th October, 1963, S. K. Lee ceased to be a director on his transferring his 400 shares to Wong Hieng Tock.

On the 1st November, 1963, the secretary sent to the five directors a notice of board meeting to be held on the 9th November, 1963, for the purpose of considering "and if thought fit to pass a resolution to forfeit the shares of those members who have failed to pay the balance due and payable on their shares".

On the 9th November, 1963, a board meeting was held. Only two directors were present — Gan Hock Chwee and Wong Hieng Tock. A resolution forfeiting the shares of twelve members was passed. Included in the twelve were the three defendants and two directors, Leong Kee Nyean and Geh Chong Keat. The defendant Peter Wong Tak On, Leong Kee Nyean and Geh Chong Keat were promptly retired from the board of directors. The shares of Gan Hock Chwee, who was then still owing $50,000 on his shares, were not forfeited. In fact at the twelfth board meeting held on the 18th May, 1963, in which only Gan Hock Chwee and Wong Hieng Tock were present, a resolution was passed to issue to Gan Hock Chwee share certificate in respect of his 1,200 shares as fully paid up. On the 9th November, 1963, the only person who held fully paid up shares was Wong Hieng Tock, who held 1,600 shares.

Notice of forfeiture of shares was sent to each of the defendants on the 12th November, 1963.

On the 18th November, 1963, Wong Hieng

Tock signed a warrant to act on behalf of the plaintiff company appointing and authorising Mr. John Tan Chor-Yong, advocate and solicitor, to act for the company in respect of the company's claim for unpaid calls against the three defendants and others.

So much for the facts relating to this matter which led up to the forfeiture of the defendants' shares.

The first point taken on behalf of the defendants is that all the directors had not complied with article 72 and section 144(1) of the Companies Ordinance (Cap. 174), in that they had not acquired their 100 qualification shares as they had not fully paid up for them within two months after their appointments as directors. The directors are therefore disqualified from acting as directors and the resolutions passed by them are null and void and are not binding on the shareholders.

Article 72 provides that "the qualification of a director shall be the holding in his own right . . . . of one hundred shares in the capital of the company". It is to be noted that the articles says "holding . . . . of one hundred shares". It does not say that the shares must be fully paid up. Learned counsel for the defendants has not cited any authority to support his contention that these qualification shares must be fully paid up shares.

The directors in this case applied for and were allotted shares in the company and the shares allotted were registered in their names in the books of the company. In my view the directors have acquired their qualification shares.

The next point taken by learned counsel for the defendants is that the special resolution purported to be passed at the extraordinary general meeting on the 13th April, 1963, is invalid. It is submitted that the only person qualified to attend and vote at that meeting was Wong Hieng Tock. Gan Hock Chwee, the only other person present at the meeting, had not paid up everything that was due from him in respect of the shares allotted to him and by article 65 he was not only not entitled to be present or to vote but also could not be reckoned in a quorum.

It is quite true that Gan Hock Chwee was not entitled to be present or to vote at this meeting and he could not be reckoned in a quorum. The question then arises whether Wong Hieng Tock alone could pass the special resolution that the quorum for general meeting and directors' meeting be reduced to two.

The extraordinary general meeting of the 13th April, 1963, was an adjourned meeting as there was no quorum present on the 6th April, 1963, the day appointed for the holding of the meeting. Article 55 provides that in the case of a meeting, not convened by requisition of members, if a quorum be not present, the meeting is to stand adjourned till that day week, at the same time and place, and if at the adjourned meeting a quorum be not present the members who are present shall be a quorum.

It is to be noted that article 55 says "the members present shall be a quorum". Learned counsel for the defendants submits that there must at least be two members duly qualified to attend and to vote present before the meeting of the 13th April, 1963, could be held. Learned counsel for the plaintiffs, however, submits that in the special circumstances of this case Wong Hieng Tock alone could validly hold the meeting and validly pass the special resolution.

Learned counsel for the plaintiffs submits that article 55 shows that one member may constitute a general meeting because although the word "members" is used in the plural the interpretation clause (article 2) provides that words importing the singular number only shall include the plural number and *vice versa*. With all due respect to learned counsel, in my view this contention is erroneous. Article 2 does not provide absolutely that the singular number is always to include the plural and *vice versa* but it is only to do so if not inconsistent with the subject or context. Studying the provisions of the articles relating to general meetings and the votes of members one sees that there are provisions for members to attend meetings not personally but by proxy and that it was not contemplated that all the shares of the company might fall into the hands of one man. I am of the view that the subject and the context are inconsistent with any other meaning of the word "members".

Learned counsel for the plaintiffs next rely on the case of *East* v. *Bennett Bros., Ltd.*[1] The facts of that case were these:

> "A company was incorporated with a capital divided into preference and ordinary shares. The memorandum of association empowered the company to increase its capital, but provided that no new shares should be issued so as to rank equally with or in priority to the preference shares, unless such issue was sanctioned by an extraordinary resolution of the holders of the preference shares present at a separate 'meeting' of such holders specially summoned for the purpose of considering the question. The articles of association contained a similar provision.
>
> Shortly after the incorporation of the company meetings were held at which a special resolution was passed and confirmed increasing its capital by a fresh issue of preference shares. At that time *B*, was the holder of all the original preference shares. He presided at the first meeting, moved the resolution for the issue of the new preference shares and signed a document in the minute-book recording his assent as the holder of all the original preference shares to the issue of the new preference shares. In pursuance of this resolution and in reliance on *B's* assent the new preference shares were subsequently issued:—
>
> *Held* that, there being nothing in the constitution of the company to prevent the whole of the original

preference shares being held by one shareholder, the word "meeting" in the memorandum and articles must be taken to have been used not in its strict sense, but as applicable to the case of a single shareholder:—

*Held*, therefore, that there had been a sufficient compliance with the requirements of the memorandum and articles, and that the new preference shares had been validly issued".

It is submitted that on the authority of *East* v. *Bennett Bros. Ltd.* Wong Hieng Tock alone could hold the meeting as he was the only person present who could vote. The only other person who was qualified to attend and vote was S. K. Lee but he did not attend.

Strictly speaking one shareholder cannot constitute a meeting (see *Sharp* v. *Dawes*;[2] *Re Sanitary Carbon Co.*[3]). Unless it is possible to show in this case that the word "meeting" has a meaning different from the ordinary meaning the extraordinary general meeting held on the 13th April could not be composed of one individual.

The present case can be distinguished from the case of *East* v. *Bennett Bros. Ltd.* First, in the present case the meeting was a meeting of the company, whereas in *East's* case it was a meeting of the holders of a particular class of shares. Second, in the present case the meeting was called to reduce the quorum for general meeting and directors' meeting which affected all the shareholders and the directors, whereas in *East's* case there was only one person who was the holder of all the shares of a particular class and affected him alone. Third, in the present case there were two persons who were eligible to attend the meeting, whereas in *East's* case there was only one person who was eligible to attend the meeting.

In my view the articles of the plaintiff company do not authorise a one-man meeting. There was therefore no extraordinary general meeting held on the 13th April, 1963, and the special resolution purported to be passed that day reducing the quorum for general meeting and directors' meeting to two is invalid.

The question arises as to whether the resolution of the 9th November, 1963, forfeiting the shares of the defendants is valid. The resolution was passed at a board meeting attended by only two directors — Gan Hock Chwee and Wong Hieng Tock. Article 89 (unamended) provides:

"The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit and determine the quorum necessary for the transaction of business. Unless otherwise determined, three shall be a quorum. . . ."

There was therefore no quorum at this meeting and the resolution purported to be passed that day is invalid. Even if I have found that this resolution was duly passed I would grant the declarations prayed for by the defendant that their shares have not been forfeited and that they are still the proprietors of the shares. The discretion of directors to forfeit shares for non-payment of calls is a trust to be exercised for the benefit of all the shareholders (see *Harris* v. *The North Devon Railway Co.*[4]). I am satisfied that in this case the discretion was not exercised for the benefit of all the shareholders but for the benefit of Wong Hieng Tock the only shareholder who held fully paid up shares of 1,600 and Gan Hock Chwee who held 1,200 shares for which he had not paid up in full at the time he voted in favour of the resolation. The total number of shares issued was 7,100 shares and Wong Hieng Tock and Gan Hock Chwee voted to forfeit the shares of twelve of the fourteen shareholders totalling 4,300 shares but favoured Gan Hock Chwee by not forfeiting his shares. This is clearly an abuse of the power to forfeit shares.

The points that I have dealt with so far are the points taken by the defendants in relation to their counterclaims. What do the defendants say about the claims of the plaintiffs? Apart from saying that these proceedings were instituted without proper authority of the plaintiff company the defendants have disclosed no defence to the claims of the plaintiffs and in fact they have no defence.

Were these three actions commenced with the authority of the plaintiff company? It was Wong Hieng Tock, the managing director, who instructed solicitors to issue the writs. It is submitted that as managing director he had power and authority to do so.

Now, the directors appoint a managing director under article 75 and they "may vest in such managing director such of the powers hereby vested in the directors generally as they think fit". By article 77 "the business of the company shall be managed by the directors". So, as regards litigation by the company the directors are the persons who have the authority to act for the company.

The burden of proving that Wong Hieng Tock had the power and authority to institute these actions rested on the plaintiff company, as his mere appointment as managing director conferred no such power and authority upon him. I am clearly of the opinion that they have not discharged that burden. There is no evidence that the directors had vested in Wong Hieng Tock their power to institute or defend actions on behalf of the company. In my view he was not clothed with such power and authority.

Then it is submitted that the board of directors had specially authorised Wong Hieng Tock to take these actions by their resolution of the 18th May, 1963. The resolution was:

"That the managing director, Mr. Peter Wong Hieng Tock be and is hereby authorised to take the necesssary action in enforcing the payment of instalments due and payable on the shares allotted on 16th January, 1962".

This meeting was attended by only two directors namely Gan Hock Chwee and Wong Hieng Tock. It is clear that this resolution is void.

In my view these three actions were commenced without authority of the plaintiff company.

Now, the question arises as to what order I can make in view of my finding that these actions were brought without authority.

In *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co. Ltd.*,[5] the solicitors of the respondent company issued the writ upon the instruction of the secretary of the company. It was held by the House of Lords that the action was instituted without authority of the company and ought to be struck out as irregular. The appeal was allowed and the action was dismissed and there was no order as to costs. Lord Parker said (at p. 348):

"My Lords, I feel some little difficulty as to the precise form which your Lordships' order ought to take. The action is altogether irregular and should be struck out, all orders made therein being of course discharged. But there is no one before the House who can be made liable for costs or who can be ordered to replace in court the moneys paid out to the secretary. There can therefore be no order as to costs, and the appellants must be left to pursue any remedy they may have against the secretary personally in respect of the money which was erroneously paid to him".

Greer L.J. in *John Shaw & Sons (Salford), Ltd.* v. *Peter Shaw & John Shaw*,[6] said (at p. 131):

"In my opinion the court has inherent jurisdiction to say 'as it is clearly established that the action has been brought by solicitors who were not authorized by the named plaintiff to bring it, we will strike it out'. They would not then be entitled to award costs against the nominal plaintiff, nor would they as a rule make any order that the solicitor should pay the costs, but would leave these matters to be determined on a motion to which the solicitors would be parties".

Slesser L.J. in the same case said (at p. 145):

"But the rights of the court in its inherent jurisdiction to stay actions which would be an abuse of its process if they are not properly upon the record, either because the plaintiff was not existent at the time of the issue of the writ or because they are satisfied on the facts that he had not authorized the proceedings, has so far been undoubted, and this, altogether apart from the desire of either party, if the facts are before the court. Where the court may properly come to a conclusion on sufficient or admitted evidence that there is no action properly before it, it may well think it right to act in accordance with that inherent jurisdiction, to refuse to proceed, and the difference which has been sought to be found between the case where no retainer could be given at all, and the case where what is still in dispute is whether in fact there was or was not authority to give one is not a difference in principle, but a difference of expediency, depending upon whether a court is or is not so informed of the facts that it does or does not think it right to come to a conclusion on the matter as a question of law.

In the present case, as I have said, the facts which have been found by the learned judge are before the court; they show, to my mind, a complete absence of authority of the company to sue in this action. In other words, I have come to the conclusion that the company is not before the court at all, and that, therefore, for this reason, the appeal succeeds and the action must be struck out; but as there is no one who is before the court who can be made liable for costs, the appellants if they desire costs must pursue such other remedies in other proceedings on this head as they may think advisable".

This trial has proved to be abortive. In my opinion the proper order to make in this case is to strike out the three actions of the plaintiffs and the counterclaims of the defendants and make no order as to costs.

It would appear from the authorities that if the defendants had questioned the authority to sue by way of motion to strike out the name of the company as plaintiffs or to stay or dismiss these actions the defendants could have in the same motion asked for costs against Wong Hieng Tock, who was the person who commenced these unauthorised actions, and against the solicitors who act for the company without authority of the company and the court could have ordered them to pay the costs. But the defendants did not proceed in that manner and the position now in that Wong Hieng Tock and the solicitors acting for the company are not parties to these proceedings and they cannot be ordered to pay the costs. The defendants if they desire costs must, I am afraid, decide what further action to take in the matter.

The three actions of the plaintiffs and the counterclaims of the defendants are struck out and there is no order as to costs.

*Actions and counterclaims struck out.*

Solicitors: *J. Tan Chor-Yong & Co.; Pillai & Co.*

---

## GOH GOK HOON v. ABDUL HAMID & ANOR.

**[A.C.J. (Ismail Khan J.) July 27, 1966]**

**[Malacca — Civil Appeal No. 1 of 1962]**

*Landlord and Tenant — Prohibition against subletting — Subletting of premises — Agreement for subletting — No parole evidence to vary terms of agreement — Evidence Ordinance, 1950, s. 92 — Control of Rent Ordinance, 1956, s. 12(1).*

This was an appeal against the decision of the learned president, sessions court, Malacca, who had dismissed the appellant's claim for possession. The appellant claimed possession on the grounds that the first respondent was in breach of a prohibition in the tenancy agreement against subletting, that neither the first respondent nor any member of his family was in possession of the premises and that having sublet the premises to the second respondent he was receiving in respect of such subletting rents which exceeded more than 10% the rent of the whole of the premises. The learned president held that the evidence was too meagre to prove "beyond reasonable doubt" that neither the first respondent nor any member of his family was in occupation of the premises and he held there had been no subletting